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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,831

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Giancarlo De Martiis

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EXAMINER

NGUYEN, MAI T

ART UNIT

PAPER NUMBER

3671

MAIL DATE

DELIVERY MODE

05/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,831	Applicant(s) DE MARTIIS, GIANCARLO	
	Examiner MAI T. NGUYEN	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the lower part" in line 2 and "the lower segment" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 2-6, 8-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Vinas Peya (US 5,918,391).**

Regarding claim 16, Vinas Peya discloses a tooth in Figs. 1-13 and Figs. 1A and 4A below, comprising:

a work element 1, 18;

a support element 2, 17 having a main body (unnumbered) whereby the support element is able to be fixed to a bucket and a front protrusion 3, 16;

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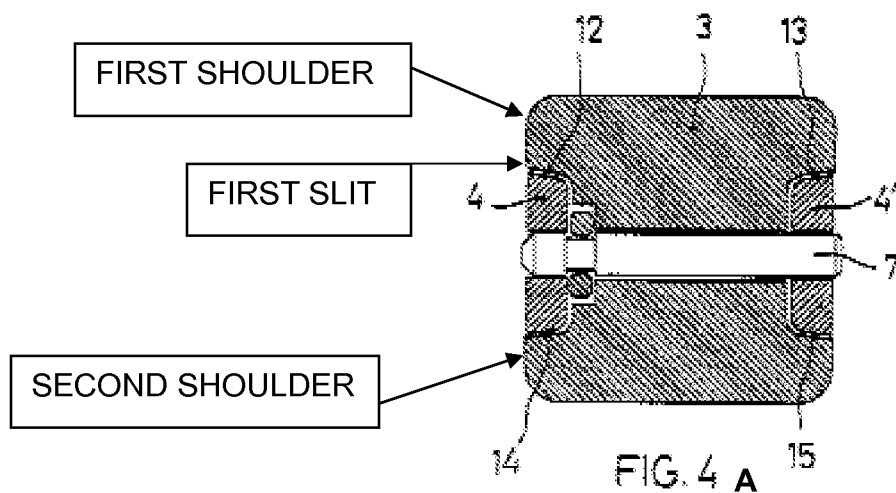
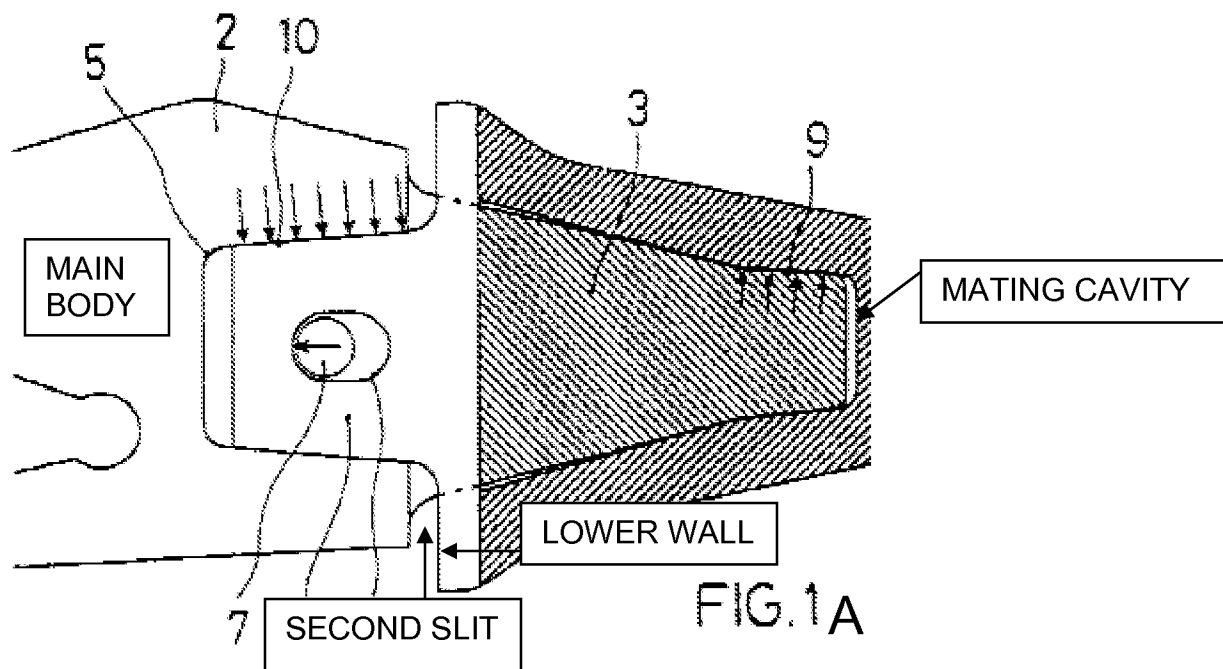
mating cavity (unnumbered) disposed within the work element and configured to receive the front protrusion in a coupling condition;

a pin 7 configured to secure the working element and the support element in the coupling condition;

a fin 4, 4', 28, 29 protruding from a rear of the work element and configured to be received by a mating recess 5, 34, 35 disposed in the main body of the support element, the fin being disposed between first and second shoulders (unnumbered) of the working element and having an upper profile (unnumbered) disposed at an angle to the first shoulder and within the mating recess when the tooth is in the coupling condition, see Fig. 4 ;

a first slit (unnumbered) disposed between the upper profile of the fin and an upper surface 12 of the mating recess;

a housing seating 6 disposed at least partially in the fin and the main body and configured to receive the pin, as best seen in Figs. 3, 4, 13, 14.



Regarding claim 2, Vinas Peya discloses the work element comprising two fins 4, 4' arranged substantially symmetrical with respect to a median longitudinal axis of the work element, see Fig. 4.

Regarding claim 3, Vinas Peya discloses each fin 4, 4' being defined by an extension of at least a lateral wall of the cavity, see Fig. 3.

Regarding claim 4, Vinas Peya discloses the cavity is delimited at a lower part by a lower wall (unnumbered), wherein a second slit is between a lower segment of the main body and the lower wall, see Fig. 1A, and a width greater than the first slit.

Regarding claim 5, Vinas Peya discloses the fins 4, 4', 28, 29 are conformed substantially as a prism with a trapezoid base, see Figs. 1 and 7.

Regarding claim 6, Vinas Peya discloses the housing seating is defined by a through hole 6, made on the main body and with a section mating with the pin, and by an aperture (unnumbered) made on each fin through which pin 7 extends, see Figs. 3 and 11.

Regarding claim 8, Vinas Peya discloses the aperture 6 is slightly off-center relative to the front protrusion 3, as seen in Fig. 2, wherein insertion of pin means 7 determines alignment of the aperture and said through hole.

Regarding claims 9 and 10, Vinas Peya discloses the aperture 6 consists of a hollow, also considered an eyelet, of the fin 4, 4', 28, 29, see Figs. 1, 2 and 5.

Regarding claims 11 and 12, Vinas Peya discloses the front protrusion 3, 16 has a transverse section that narrows from a rear end thereof, facing towards the main body to a front end thereof, see Figs. 1 and 5.

Regarding claim 13, Vinas Peya discloses the front protrusion 16 has a longitudinal groove created by surfaces 21, 22 on a face thereof, see Fig. 5.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vinas Peya alone.

7. Regarding claim 7, Vinas Peya discloses a tooth assembly having a gap, as best seen in Fig. 1, extending a length between pin means 7 and a side edge of the aperture 4, wherein the amplitude of the gap is greater than the width of the first slit; but the gap is not between the pin and a lower edge of the aperture as claimed. However, it is obvious that a person of ordinary skill could reorient the aperture so that the gap is below the pin without departing from original function of the gap. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to reorient the gap of Vinas Peya to be between the pin and the lower edge of the aperture because it is well within the knowledge of one of ordinary skill to reorient the gap without departing from the original function of the gap.

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinas Peya in view of Radigan (US 4,338,736).

9. Regarding claims 14 and 15, Vinas Peya discloses a tooth assembly having a pin means 7 but does not disclose pin means being partly deformable. Radigan teaches a

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similar tooth assembly having a pin means 16 having a section that is partly deformable elastically and wherein the pin means are axially hollow and have a longitudinal through cut, see Fig. 2 and column 2, lines 31-49. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the tooth assembly of Vinas Peya with a deformable pin as taught by Radigan in order to easily insert a pin to lock a wear element to a support of a tooth assembly.

Response to Arguments

10. Applicant's arguments with respect to claims 2-16 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's argument regarding the limitations now required in new claim 16, the rejection above is provided and points out the required limitations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAI T. NGUYEN whose telephone number is (571)272-7662. The examiner can normally be reached on Monday-Friday 8:00a-5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/
Supervisory Patent Examiner
Art Unit 3671

Mtn
5/25/09